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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 CHARLES LINDEN and RONALD
8 LANDER,

9 Plaintiffs,

10 v.

11 X2 BIOSYSTEMS, INC., *et al.*,

12 Defendants.

Case No. C17-0966 RSM

ORDER GRANTING MOTION FOR
JUDGMENT ON THE PLEADINGS AND
GRANTING LEAVE TO AMEND

13
14 **I. INTRODUCTION**

15 This matter comes before the Court on Defendants' Motion for Judgment on the Pleadings
16 pursuant to Federal Rule of Civil Procedure 12(c). Dkt. #55. Defendants seek the dismissal of
17 all of Plaintiffs' claims, on the basis that Plaintiffs have failed to plead they were terminated
18 without just cause, which is the trigger for the compensation they allege they are owed. *Id.*
19 Plaintiffs oppose the motion, arguing that they have adequately pled they were terminated
20 without just cause, and that Defendants cannot support their definition of that term. Dkt. #66.
21 Having reviewed the record before it, and neither party having requested oral argument on the
22 motion, the Court now GRANTS Defendants' motion, subject to leave to amend.
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25 **II. BACKGROUND**

26 This matter raises allegations of breach of contract and willful deprivation of wages in
27 violation of RCW 49.52.050 and RCW 49.52.070. Dkt. #1. Plaintiffs filed their Complaint in
28 this Court on June 27, 2017, and allege the following factual background to their claims:

1 4.1 Plaintiffs Linden and Lander are former employees of Defendant X2.

2 4.2 Plaintiff Linden was employed by Defendant X2 as a consultant from
3 September 3, 2013 until October 31, 2013, and as a salaried employee with
4 the title Strategic Program Manager from November 1, 2013 until March 6,
5 2017.

6 4.3 Plaintiff Lander was employed by Defendant X2 as a consultant to
7 Defendant X2 and to its former company, X2 Impact, from November 2012
8 until October 31, 2013 and as a salaried employee with the title Program
9 Manager for Defendant X2 from November 1, 2013 until March 6, 2017.

10 4.4 Defendant X2 is a private corporation that develops and distributes
11 impact monitoring devices and software providing neurocognitive baseline
12 testing, post-impact assessments, remove-from-play decision support, and
13 recovery and return-to-play monitoring. See **Exhibit A**.

14 4.5 During their employment with Defendant X2, Plaintiffs were responsible
15 for identifying and developing relationships and agreements between various
16 government agencies and Defendant X2. Plaintiffs' duties included securing
17 meetings with relevant members of government agencies, preparing bids and
18 proposals for government contracts, and conducting research.

19 4.6 During their employment with Defendant X2, Plaintiffs met numerous
20 milestones in securing government contracts, preparing bids and proposals
21 for said contracts, and delivering on said contracts.

22 4.7 In November 2013, Plaintiffs became salaried employees of Defendant
23 X2.

24 4.8 For the employment period from November 2013 to May 2014, Plaintiffs
25 received reimbursement of their travel and business expenses but did not
26 receive salaries from Defendant X2. During this time, Defendant X2 assured
27 Plaintiffs that they would receive salaries and back pay once Defendant X2
28 secured funds.

4.9 In January 2014, Plaintiffs and Defendant X2 executed employment
contracts and stock agreements memorializing Plaintiffs' employment
agreement with Defendant X2. See **Exhibit B**. These agreements
memorialized Plaintiffs' positions as members of Defendant X2's
Government Industrial Division ("GID"), which was the sole department at
Defendant X2 responsible for securing and performing on government
contracts.

1 4.10 In May 2014, Plaintiffs were included on Defendant X2's employee
2 payroll, and Defendant X2 provided funds to Plaintiffs that constituted their
salaries, signing bonuses, and back pay from November 2013 to date.

3 4.11 In March 2015, Defendant X2 requested that Plaintiffs renegotiate their
4 employment contracts for lesser compensation. Plaintiffs did not agree to
Defendant X2's request. See **Exhibit C**.

5 4.12 In October 2015, two members of the GID resigned from Defendant X2
6 due to payroll disputes, and Plaintiffs subsequently assumed the departed
7 members' duties and responsibilities. Defendant X2 promised to Plaintiffs a
8 salary increase and additional compensation for assuming said duties and
responsibilities, which promise did not materialize.

9 4.13 In August 2016, Defendant X2 requested that Plaintiff Linden sign an
10 agreement stipulating that Plaintiff Linden would become an unpaid board
11 member of Defendant X2. See **Exhibit D**. Defendant X2 abandoned its
request before said agreement could be formalized.

12 4.14 In September 2016, on information and belief, Defendant X2 ceased
13 support for the GID; to wit, in September 2016, a government-funded
14 research grant, which had been awarded to Defendant X2 for a contract
15 Plaintiffs secured, ended, with Defendant X2 failing to meet its milestone
16 deliverables for said contract during the research grant period. Through
17 Plaintiffs' diligent efforts, Plaintiffs secured from the government a no-cost
18 extension to the contract, and thereafter worked on their own to meet the
contract milestones. From the time the research grant expired until the
19 contract's completion in March 2017, Defendant X2 failed to provide
20 Plaintiffs with internal support to meet the contract milestones and failed to
21 reimburse Plaintiffs for incurred travel and business expenses.

22 4.15 On March 6, 2017, Plaintiffs completed the collection of data for a
23 government contract on which they had been performing since January 2014.
24 That same day, then and current CEO Defendant Wu telephoned Plaintiffs
25 individually to inform them that Defendant X2 was terminating their
26 positions due to lack of company funds, and instructed Plaintiffs to cease all
27 work for Defendant X2.

28 4.16 Defendant X2 currently has several pending government contracts,
which Plaintiffs negotiated and secured.

4.17 On April 6, 2017, Plaintiffs jointly sent CEO Wu written correspondence
acknowledging their termination and requesting their severance, bonuses,
and Phantom Stock compensation, as pursuant to the employment and stock
contracts, as well as reimbursement of travel and business expenses incurred
during the last few months of their employment. See **Exhibit E**.

1 4.18 On May 11, 2017, Plaintiffs received written response correspondence
2 from Defendant X2 through its counsel. In its correspondence, Defendant
3 X2 confirmed that Plaintiffs had been terminated due to Defendant X2's lack
4 of funds, and made clear that Defendant X2 would not be issuing Plaintiffs
their severance benefits, bonuses, or stock.

5 4.19 As of the date of this Complaint, Plaintiffs have received no severance,
6 no bonuses, and no stock.

7 4.20 As of the date of this Complaint, upon information and belief, Defendant
8 X2 continues to operate and do business.

9 4.21 As of the date of this Complaint, upon information and belief, Defendant
10 Wu, Defendant Flaim, and Defendant Siege continue to receive salaries
and/or compensation from Defendant X2.

11 4.22 Upon information and belief, Defendant X2 has sufficient funds with
12 which to pay Plaintiffs their severance, bonuses, and stock benefits.

13 **The Employment and Phantom Stock Contracts**

14 4.23 Sections 3 and 4 of Plaintiffs' employment and Phantom Stock contracts
15 set forth the relevant terms of Plaintiffs' compensation. Pursuant to Sections
16 3 and 4 of the employment contract, Plaintiffs each received an annual salary
17 of \$120,000 per year, plus a one-time signing bonus of \$15,000, annual
18 bonuses, milestone bonuses, and 150,000 shares of Phantom Stock. Section
19 3 further memorialized Defendant X2's assurances, made at the time of
20 execution, that Plaintiffs' would receive their salary and bonuses once
21 Defendant X2 secured funding.

22 4.24 Throughout the duration of their employment, Plaintiffs achieved,
23 amongst other milestones, the execution of pilot programs at Fort Benning,
24 Fort Bragg, Fort Leonard Wood, Ford Rucker, Dam Neck, and other special
25 operation bases, negotiation and development of consortium agreements,
26 award of government grants and monies, and the award of sole source
27 contracts and a cooperative research and development agreement from the
28 government, all for Defendant X2.

4.25 Throughout the duration of their employment, Plaintiffs never received
any annual or milestone bonuses.

4.26 Throughout the duration of their employment, Plaintiffs never received
any distribution of Phantom Stock.

1 Defendants' Answers. Dkt. #56. The Court considers the pleadings themselves, which are
2 already contained in the record.

3 **B. Plaintiffs' Complaint**

4 On this motion, Defendants seek the dismissal of both causes of action asserted by
5 Plaintiffs. The Court addresses each Cause of Action, in turn, below.

6 *1. Breach of Contract*

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8 Defendants first argue that Plaintiffs' Cause of Action One for breach of contract must
9 be dismissed in its entirety because Plaintiffs were terminated for "just cause," which precludes
10 them from recovering the damages they now seek in this action. Dkt. #55 at 7-8. Plaintiffs
11 respond that financial inability to pay wages does not constitute "just cause" and therefore their
12 claim must proceed. Dkt. #66 at 5-7.

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14 As an initial matter, the Court examines the term "just cause" as used in the alleged
15 employment contracts between Plaintiffs and Defendant X2. *See* Dkt. #1, Ex. B. Under
16 Washington law, when interpreting a written contract, the intent of the contracting parties
17 controls. *Dice v. City of Montesano*, 131 Wn.App. 675, 683-84, 128 P.3d 1253 (2006).
18 Washington follows the "objective manifestation theory" of contract interpretation, under which
19 determining the parties' intent begins with a focus on the reasonable meaning of the contract
20 language. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262
21 (2005). Contracts are considered as a whole, interpreting particular language in the context of
22 other contract provisions. *See Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654,
23 669-70, 15 P.3d 115 (2000). Words are generally given their ordinary, usual, and popular
24 meaning unless the entirety of the agreement clearly demonstrates a contrary intent. *Hearst*, 154
25 Wn.2d at 504.
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1 The contracts at issue in this matter do not define the term “just cause.” *See* Dkt. #1, Ex.

2 B. However, under the standard discussed above, Washington courts have defined “just cause”
3 with its plain and ordinary meaning:

4 “[J]ust cause” is a fair and honest cause or reason, regulated by good faith on
5 the part of the party exercising the power. We further hold a discharge for
6 “just cause” is one which is not for any arbitrary, capricious, or illegal reason
7 and which is one based on facts (1) supported by substantial evidence and (2)
reasonably believed by the employer to be true.

8 *Baldwin v. Sisters of Providence in Washington, Inc.*, 112 Wn.2d 127, 139, 769 P.2d 298 (1989).

9 Plaintiffs provide no valid reason as to why this Court should not use that definition.

10 Accordingly, the Court now turns to Defendants’ justification for Plaintiffs’ termination.

11 Plaintiffs allege that they were terminated due to “lack of company funds,” which they
12 appear to assert is without just cause. Dkt. #1 at ¶¶ 4.15, 4.27 and Ex. E. They further allege
13 that “Defendant X2 breached Plaintiffs’ employment contracts by failing to provide Plaintiffs
14 with severance compensation as set forth in Section 7(b)(iii)” and “by failing to provide Plaintiffs
15 with annual bonuses, milestone bonuses, and stock benefits as set forth in Sections 3, 4, and 7 of
16 the employment contracts.” Dkt. #1 at ¶¶ 5.3 and 5.4. Pursuant to the contracts presented by
17 Plaintiffs, Defendant X2 may terminate Plaintiffs for “just cause,” in which case the Plaintiff
18 would not be entitled to advance notice or compensation in lieu of advance notice, although they
19 would be entitled to any base salary and bonuses earned, or “without just cause,” in which case
20 Plaintiffs would have been entitled to severance compensation in addition to earned salary and
21 bonuses. Dkt. #1, Ex. B, *Contract* at ¶ 7(b). It is the severance compensation they seek now
22 through Cause of Action One. Dkt. #1 at ¶ 5.3.

23 Having reviewed the pleadings in this case, the Court agrees with Defendants that
24 Plaintiffs were terminated for just cause. *See* Dkt. #55 at 7-8. Plaintiffs do not plead that they
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1 were terminated for any arbitrary, capricious, or illegal reason. Instead, Plaintiffs plead that they
2 were terminated due to the financial inability of X2 to pay them. Although Plaintiffs, argue that
3 “just cause” focuses on employee actions, and refers to improper employee conduct, they do not
4 cite any legal authority that supports their proposition. Dkt. #66 at 6-7. Thus, the Court is not
5 persuaded by Plaintiffs’ unsupported argument. Further, other courts have also held that
6 terminations for economic reasons constitute termination for just cause. *See, e.g., McMillan v.*
7 *NAPCO Scientific Co.*, 1993 U.S. Dist. LEXIS 1415, at *9 (D. Or. 1993) (finding that
8 “termination of employment which is motivated by economic circumstances is termination for
9 just cause.” (citation omitted)). *See also Gianaculas v. Trans World Airlines, Inc.*, 761 F.2d
10 1391, 1395 (9th Cir. 1985) (“[T]he evidence indicates that appellants were furloughed as part of
11 a general reduction in TWA’s management work force necessitated by the company’s economic
12 circumstances and resulting in the abolishment of their positions. In contrast to the situation in
13 *Cleary*, appellants were not, therefore, dismissed without good cause.”).

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16 As noted above, in *Baldwin v. Sisters of Providence*, the Washington Supreme Court held
17 that “just cause” for an employee termination means a “fair and honest cause or reason, regulated
18 by good faith on the part of the party exercising the power.” 112 Wn.2d at 139. The court did
19 not limit that definition to employee misconduct or any other specific, factual event that might
20 occur. Thus, this Court agrees with Defendants that if “just cause” is not defined in the contract,
21 a party exercising the power (here, X2) acts in good faith when it decides to terminate its
22 employees and that termination is deemed to be “for just cause” unless it was done for some
23 “arbitrary, capricious, or illegal reason.” *See* Dkt. #55 at 7-8. Plaintiffs do not contend X2
24 terminated them for any pretextual reason. To the contrary, Plaintiffs plead that they were
25 terminated because Defendants determined they could no longer afford to keep Plaintiffs on the
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1 payroll. Accordingly, the Court finds as a matter of law that Plaintiffs cannot claim they were
2 terminated without just cause, and their first cause of action as pled must be dismissed.

3 *2. Willful Withholding of Wages*

4 In Cause of Action Two, Plaintiffs allege that Defendants wrongfully and willfully
5 withheld Plaintiffs' wages in violation of RCW 49.52.050 by refusing to pay Plaintiffs their
6 severance, bonuses and stock benefits. Dkt. #1 at ¶ 6.6. Because such compensation, in part, is
7 triggered by a termination without just cause, and because the Court has found that Plaintiffs
8 were terminated with just cause as a matter of law, this cause of action must also be dismissed
9 because, as pled, it seeks compensation that is no longer available as a remedy. Accordingly, the
10 Court dismisses Plaintiffs' Cause of Action Two.
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12 **C. Leave to Amend**

13
14 Ordinarily, leave to amend a complaint should be freely given following an order of
15 dismissal, "unless it is absolutely clear that the deficiencies of the complaint could not be cured
16 by amendment." *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987); *see also DeSoto v. Yellow*
17 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) ("A district court does not err in denying
18 leave to amend where the amendment would be futile." (citing *Reddy v. Litton Indus., Inc.*, 912
19 F.2d 291, 296 (9th Cir. 1990)). Here, the Court has identified the deficiencies for which it has
20 dismissed Plaintiffs' claims. However, given Plaintiffs' argument in response to the instant
21 motion regarding other compensation sought, and the fact that Plaintiffs' may be able to allege a
22 cause of action even if termination was for just cause, Plaintiffs shall have the opportunity to
23 correct those deficiencies should they believe they can do so, through the filing of an Amended
24 Complaint.
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